

12/19/71

Wiretap Extent Disputed

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The Justice Department and Sen. Edward M. Kennedy clashed yesterday over the number of wiretaps and "bugs" the government uses on grounds of national security.

Sen. Kennedy released a Justice Department letter which he said shows that the extent of such wiretapping and bugging is "substantially greater" than the government had led the public to believe.

The Justice Department responded with a detailed denial of Kennedy's "erroneous and misleading allegations." The department statement said that there have never been more than 50 wiretaps in operation at any one time in the last three years, except for a few days in 1969 and in 1970.

The letter released by Kennedy was from Assistant Attorney General Robert C. Mardian and was the first government breakdown of wiretaps and bugs in the national security field.

The Massachusetts Democrat said the numbers are about two to three times higher than those cited in recent statements by President Nixon and Solicitor General Erwin N. Griswold. And the duration of the surveillances is three to nine times greater than those authorized by court order in criminal cases, Kennedy said.

As chairman of the Senate Subcommittee on Administrative Practice and Procedure, Kennedy requested the electronic surveillance breakdown last February. Mardian's response came March 1. Aides to Kennedy attributed the delay in releasing the letter to indecision on what to do with it.

National security eavesdropping is a constant object of controversy. The 1968 Omnibus Crime Act gave the government the authority to bug and tap in major criminal

cases with court approval; the government has claimed the right to bug and tap without court order in national security matters. Whether such surveillance can be conducted legally on domestic groups as well as foreign nationals is a question currently being reviewed by the Supreme Court.

Wiretapping refers to interception of telephone conversations, while bugging is electronic eavesdropping on room conversations, usually with a microphone.

According to Mardian's letter, the Justice Department operated 97 national security telephone surveillances and 16 national security microphone surveillances in 1970, or a total of 113 listening devices. This compares with 180 court-approved devices for the same year.

Mardian also revealed that the maximum number of telephone taps in use at any given time during 1970 was 56; the maximum number of microphone bugs was six.

The disclosures do not contradict the wiretap statistics annually cited by Federal Bureau of Investigation Director J. Edgar Hoover. Hoover carefully couches his language to apply only to the number of surveillances on a given day.

But Kennedy said the Mardian figures "flatly" contradict statements on the subject by President Nixon and Solicitor General Griswold.

Last April, Kennedy wrote, President Nixon told the annual convention of the American Society of Newspaper Editors:

"Now, in the two years that we have been in office—now get this number—the total number of taps for national security purposes by the FBI, and I know because I look not at the information but at the decisions that are made—the total number of taps is less, has been less, than 50 a year."

Mr. Nixon compared this number with "only 300 taps" by the FBI through court orders over a two-year period, a transcript provided by Kennedy's office shows.

Justice Department officials have said that only the FBI installs national security listening devices for the Justice Department.

Kennedy also cited a brief submitted by Griswold to the Supreme Court last September. It listed the number of national security telephone

taps as 36 for 1970.

"The above figures are flatly contradicted by . . . Mardian's March 1 letter to me in which he reveals that a total of 97 warrantless (national security) telephone taps were operated in 1970—almost double the President's figure and almost triple the Solicitor General's figure," Kennedy wrote.

Neither Mr. Nixon nor Griswold referred to the number of microphone installations.

Kennedy added that he is "extremely concerned" because Mardian's letter indicates the total number of days of listening with national security devices in 1970 was three to nine times greater than days of court-ordered listening.

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